APPENDIX E

LETTER OF CREDIT

JPMorganChase

JPMorgan Chase Bank, N.A.
c/o JPMorgan Treasury Services
Global Trade Services
10420 Highland Manor Drive
Tampa, FL 33610

SPECIMEN

-VALUE DATE-
OUR L/C NO.: TPTS-348665

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: TPTS-348665

MAXIMUM AMOUNT: U.S. $1,907,500.00

BENEFICIARY:
U.S. ENVIRONMENTAL PROTECTION AGENCY
C/O GEORGE M. PAVLOU, DIRECTOR
EMERGENCY AND REMEDIAL RESPONSE DIVISION
EPA REGION 2
290 BROADWAY, 19TH FLOOR
NEW YORK, NY 10007-1866

APPLICANT:
NEPERA, INC./CAMBREX CORPORATION
ONE MEADOWLANDS PLAZA
EAST RUTHERFORD, NJ 07073

DEAR SIR OR MADAM:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. TPTS-348665 IN YOUR FAVOR, AT THE REQUEST AND FOR THE ACCOUNT OF THE APPLICANT, NEPERA, INC./CAMBREX CORPORATION, IN THE AMOUNT OF EXACTLY ONE MILLION NINE HUNDRED SEVEN THOUSAND FIVE HUNDRED U.S. DOLLARS (U.S.$1,907,500.00) (THE "MAXIMUM AMOUNT"). WE HEREBY AUTHORIZE YOU, THE U.S. ENVIRONMENTAL PROTECTION AGENCY (THE "BENEFICIARY"), TO DRAW AT SIGHT ON US, JPMORGAN CHASE BANK, N.A., STANDBY LETTER OF CREDIT DEPARTMENT, 4TH FLOOR, 10420 HIGHLAND MANOR DRIVE, TAMPA, FLORIDA 33610, AN AGGREGATE AMOUNT EQUAL TO THE MAXIMUM AMOUNT UPON PRESENTATION OF:

(1) YOUR SIGHT DRAFT, BEARING REFERENCE TO THIS LETTER OF CREDIT NO. TPTS-348665 (WHICH MAY, WITHOUT LIMITATION, BE PRESENTED IN THE FORM ATTACHED HERETO AS EXHIBIT A); AND

(2) YOUR SIGNED STATEMENT READING AS FOLLOWS: "I CERTIFY THAT THE AMOUNT OF THE DRAFT IS PAYABLE PURSUANT TO [THAT CERTAIN CONSENT DECREE, DATED....., 20..., BY AND AMONG THE UNITED STATES AND NEPERA, INC./CAMBREX CORPORATION], ENTERED INTO BY THE PARTIES THERETO IN

JPMorganChase

JPMorgan Chase Bank, N.A.
c/o JPMorgan Treasury Services
Global Trade Services
10420 Highland Manor Drive
Tampa, FL 33610

SPECIMEN

-VALUE DATE-
OUR L/C NO.: TPTS-348665

ACCORDANCE WITH THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT(CERCLA)."

THIS LETTER OF CREDIT IS EFFECTIVE JULY 31, 2008 AND SHALL EXPIRE ON APRIL 5, 2009, BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED FOR A PERIOD OF ONE (1) YEAR ON APRIL 5, 2009 AND ON EACH SUCCESSIVE EXPIRATION DATE, UNLESS, AT LEAST ONE HUNDRED TWENTY (120) DAYS BEFORE THE CURRENT EXPIRATION DATE, WE NOTIFY BOTH YOU AND NEPERA, INC./CAMBREX CORPORATION BY CERTIFIED MAIL THAT WE HAVE DECIDED NOT TO EXTEND THIS LETTER OF CREDIT BEYOND THE CURRENT EXPIRATION DATE. IN THE EVENT YOU ARE SO NOTIFIED, ANY UNUSED PORTION OF THE CREDIT SHALL IMMEDIATELY THEREUPON BE AVAILABLE TO YOU UPON PRESENTATION OF YOUR SIGHT DRAFT FOR A PERIOD OF AT LEAST 120 DAYS AFTER THE DATE OF RECEIPT BY BOTH YOU NEPERA, INC./CAMBREX CORPORATION OF SUCH NOTIFICATION, AS SHOWN ON SIGNED RETURN RECEIPTS. IN NO EVENT SHALL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED BEYOND APRIL 5, 2012.

MULTIPLE AND PARTIAL DRAWS ON THIS LETTER OF CREDIT ARE EXPRESSLY PERMITTED, UP TO AN AGGREGATE AMOUNT NOT TO EXCEED THE MAXIMUM AMOUNT. WHENEVER THIS LETTER OF CREDIT IS DRAWN ON, UNDER, AND IN COMPLIANCE WITH THE TERMS HEREOF, WE SHALL DULY HONOR SUCH DRAFT UPON PRESENTATION TO US, AND WE SHALL DEPOSIT THE AMOUNT OF THE DRAFT IN IMMEDIATELY AVAILABLE FUNDS DIRECTLY INTO SUCH ACCOUNT OR ACCOUNTS AS MAY BE SPECIFIED IN ACCORDANCE WITH YOUR INSTRUCTIONS.

ALL BANKING AND OTHER CHARGES UNDER THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

EXCEPT AS OTHERWISE STATED HEREIN, THIS IRREVOCABLE LETTER OF CREDIT SHALL BE SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600.

JPMorganChase

JPMorgan Chase Bank, N.A.
c/o JPMorgan Treasury Services
Global Trade Services
10420 Highland Manor Drive
Tampa, FL 33610

SPECIMEN

-VALUE DATE-
OUR L/C NO.: TPTS-348665

EXHIBIT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY SIGHT DRAFT

TO: JPMORGAN CHASE BANK, N.A.
STANDBY LETTER OF CREDIT DEPARTMENT, 4TH FLOOR
10420 HIGHLAND MANOR DRIVE
TAMPA, FLORIDA 33610

RE: LETTER OF CREDIT NO. TPTS-348665
DATE: [INSERT DATE THAT DRAW IS MADE]
TIME: [INSERT TIME OF DAY DRAW IS MADE]

THIS DRAFT IS DRAWN UNDER YOUR IRREVOCABLE LETTER OF CREDIT NO TPTS-348665. PAY TO THE ORDER OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, IN IMMEDIATELY AVAILABLE FUNDS, THE AMOUNT OF [IN WORDS] U.S. DOLLARS ([U.S.$.....]) OR, IF NO AMOUNT CERTAIN IS SPECIFIED, THE TOTAL BALANCE REMAINING AVAILABLE UNDER YOUR IRREVOCABLE LETTER OF CREDIT NO. TPTS-348665.

PAY SUCH AMOUNT AS IS SPECIFIED IN THE IMMEDIATELY PRECEDING PARAGRAPH BY FED WIRE ELECTRONIC FUNDS TRANSFER ("EFT") TO THE [SITE NAME] SPECIAL ACCOUNT WITHIN THE EPA HAZARDOUS SUBSTANCE SUPERFUND IN ACCORDANCE WITH CURRENT EFT PROCEDURES, REFERENCING FILE NUMBER [.....], EPA REGION AND SITE SPILL ID NUMBER [.....], AND DOJ CASE NUMBER [.....], AS FOLLOWS:

[INSERT SPECIFIC SPECIAL ACCOUNT WIRING INSTRUCTIONS AND INFORMATION]

THIS SIGHT DRAFT HAS BEEN DULY EXECUTED BY THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OR AGENT OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, WHOSE SIGNATURE HEREUPON CONSTITUTES AN ENDORSEMENT.

BY: ..... [SIGNATURE]
..... [NAME]
..... [TITLE]

JPMorganChase

JPMorgan Chase Bank, N.A.
c/o JPMorgan Treasury Services
Global Trade Services
10420 Highland Manor Drive
Tampa, FL 33610

SPECIMEN

-VALUE DATE-
OUR L/C NO.: TPTS-348665

AUTHORIZED SIGNATURE

COMPANY NAME
AGREES TO THE WORDING OF
THIS STANDBY LETTER OF
CREDIT

AUTHORIZED SIGNATURE

********* DRAFT MAY 20, 2008 01:31 PM *********

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAY 2 8 2008

ENFORCEMENT CONFIDENTIAL
ATTORNEY/CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT

Cathy Seibel, Esq.
Acting United States Attorney for the
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007

Re: Proposed CERCLA Consent Decree for Remedial Design/Remedial Action for the Nepera Chemical Company Superfund Site, Town of Hamptonburgh, Orange County, New York

E.A. No. 02-2008-0030

Dear Ms. Seibel:

Enclosed is a Consent Decree between the United States and Settling Defendants in proposed resolution of our claims pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606 and 9607(a), with respect to the Nepera Chemical Company Superfund Site, Town of Hamptonburgh, Orange County, New York. This Consent Decree will require the Settling Defendants to perform the remedial design/remedial action for the Site as well as to reimburse $495,000 in the United States' past response costs.

The Consent Decree has been signed by the Settling Defendants and EPA Region II. The Consent Decree is being submitted to DOJ for its approval, lodging with the U.S. District Court for the Southern District of New York, and publishing of notice of a public comment period in the Federal Register.

Additional information concerning this agreement is contained in the enclosed memorandum prepared by George Shanahan of the Office of Regional Counsel. Sarah Light of your staff is the Assistant United States Attorney who participated with George in the negotiation of this agreement.

plea
90-11-3-09274

If you have any questions regarding this matter, please call me at (212) 637-4390 or have your staff contact Mr. Shanahan of our Office of Regional Counsel at (212) 637-3171.

Thank you for your assistance.

Sincerely,

George Pavlou
Acting Director
Emergency & Remedial Response Division

Enclosures

cc: Susan E. Bromm, Esq.
Director, Office of Site Remediation Enforcement

Ronald J. Tenpas, Esq.
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

ENFORCEMENT
CONFIDENTIAL

DATE: May 5, 2008

SUBJECT: Ten-Point Memorandum for Proposed Remedial Design/Remedial Action Consent Decree with respect to the Nepera Chemical Company Superfund Site, Town of Hamptonburgh, Orange County, New York

FROM: George A. Shanahan, Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel

TO: Thomas K. Lieber, Chief
New York/Caribbean Superfund Branch
Office of Regional Counsel

Set forth below is a discussion providing background information on the Nepera Chemical Company Superfund Site in the Town of Hamptonburgh, Orange County, New York ("Site").

A description of a proposed settlement and an evaluation of the settlement under the ten criteria outlined in EPA's December 5, 1984 Interim CERCLA Settlement Policy" is also provided below.

I. BACKGROUND

The Site is located approximately 1.5 miles south of the Village of Maybrook, in the Town of Hamptonburgh, Orange County, New York, on the southern side of Orange County Highway 4. The Site is approximately 29.3 acres in size and, at its western boundary, includes a portion of the Beaverdam Brook which flows into Otter Kill just beyond the southern boundary of the Site. The Site is surrounded by farmland and is designated for a low density rural residential/agricultural usage in the Town of Hamptonburgh's Master Plan. Public water supply wells for the Village of Maybrook are located approximately 800 feet to the northeast of the Site.

The majority of the Site is forested except for the area of six former wastewater lagoons which are covered with grasses, wildflowers and brush. The former lagoons comprise a total area of approximately three acres located within a five acre area.

The Pyridium Corporation ("Pyridium") was founded in 1925 in New York City. In 1942, Pyridium commenced operations at a facility

in Harriman, New York, approximately 25 miles away from the Site, for the production of bulk pharmaceutical chemicals and pyridine compound intermediates that were used, *inter alia*, in the production of Vitamin B-3. In 1949, the Pyridium Corporation merged with the Nepera Chemical Company to form the Nepera Chemical Company, Inc. In 1952, when Nepera's operations at the Harriman facility were constrained by problems in disposing of its wastewater, it purchased farmland at the Site for such disposal. It commenced construction of wastewater lagoons at the Site in 1952, and these were utilized for disposal of liquid wastes from the Harriman plant from 1953 to 1967.

In December 1956, Warner-Lambert purchased Nepera. The Pyridium/Nepera corporation subsequently was dissolved and Warner-Lambert reincorporated the company as Nepera, Inc. on January 11, 1957. Warner-Lambert continued to operate the lagoons at the Site for the disposal of liquid wastes from the Harriman facility from its purchase of Nepera in December 1956 until 1967 when industrial wastes were no longer disposed of at the Site. Warner-Lambert filled three of the lagoons in 1968 and the remaining three lagoons were filled in 1974. Warner-Lambert sold Nepera to Schering A.G., a West German corporation, in 1976 after the last three lagoons at the Site had been backfilled. Schering had no known involvement with waste disposal at the Site. In 1986, Schering sold Nepera to CasChem Group, Inc. of Bayonne, New Jersey. CasChem was renamed Cambrex Corporation in 1987. At present, Nepera, Inc. remains a 100%-owned subsidiary of Cambrex.

On October 1, 1984, EPA proposed the Site for addition to the National Priorities List ("NPL") on the basis of groundwater and soil data demonstrating contamination with volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs") and heavy metals. The Site was added to the NPL on June 1, 1986.

The New York State Department of Environmental Conservation ("NYSDEC") entered into administrative consent orders with Nepera in 1984 for Nepera to conduct preliminary environmental investigations at both the Harriman plant and the Site. Nepera completed the preliminary investigation for the Site in May 1987. NYSDEC subsequently issued an administrative complaint against Nepera, Warner-Lambert and the Estate of William Lasdon, a former owner/operator of the Site prior to Warner-Lambert's acquisition of Nepera. NYSDEC's complaint sought to have these parties, *inter alia*, conduct the remedial investigation/feasability study ("RI/FS") for the Site. On March 21, 1988, NYSDEC entered into an administrative stipulation with Nepera and Warner-Lambert for these two parties to perform the RI/FS.

Nepera's consultants, Conestoga-Rovers & Associates, performed the RI/FS for the Site and, in the draft FS Report in 1994 recommended a remedy consisting of soil vapor extraction ("SVE") and in-situ biopiles. EPA expressed concerns to NYSDEC about the adequacy of the characterization of groundwater at the Site for the RI and the companies' recommendation of the biopiles in the draft FS. NYSDEC did not include all of EPA's concerns in its comments to Nepera. Nepera subsequently conducted treatability studies to assess the viability of SVE/biopiles for Site remediation which culminated in a treatability study report dated September 25, 1997.

EPA continued to have concerns with respect to the RI/FS and the treatability study. In a July 1, 1998 letter, EPA directed Nepera to install additional groundwater wells so as to further define the extent of groundwater contamination and to provide a basis for assessment of whether an active groundwater remedy would be necessary at the Site. In addition, since biopiles would not treat heavy metals in soil and the addition of bulking agents in the biopiles would tend to dilute the concentrations of metals in the soils, EPA required Nepera to conduct additional sampling for heavy metals in soils to determine whether baseline levels of metals in soils, prior to any application of technology, would present unacceptable risks. With its submission of this July 1, 1998 letter, EPA took over the *de facto* lead for the Site. Nepera submitted revised work plans in 1999 in response to EPA's July 1998 directions. Additional groundwater wells were installed in 2001 to further investigate the groundwater plume in the overburden and bedrock at the Site. In response to EPA comments, Nepera agreed to perform additional inorganic characterization of the lagoons, background sampling and mercury speciation. In 2002, Nepera took additional groundwater samples. In 2003, additional soil samples were taken from the lagoons as well as from offsite areas to determine background levels; all samples were analyzed for inorganics (including mercury speciation).

EPA prepared the Proposed Plan in June 2007, and issued a Record of Decision (ROD) and a Special Notice Letter to potentially responsible parties on September 28, 2008.

The ROD requires, among other things, the excavation of Site soils within the former lagoons and placement of the soils into a biocell, using soil vapor extraction and biological degradation technologies to reach target cleanup levels; backfilling of the excavated areas of the Site which are not utilized in the construction of the biocell; and bioremediation of the groundwater following the removal of source area soils by the

introduction of oxygenating compounds to enhance the indigenous microbial population. The ROD remedy also requires the implementation of a long-term groundwater monitoring program to verify that the concentrations and the areal extent of the groundwater contaminants are declining. Results of the long-term groundwater monitoring will be used to evaluate the effectiveness of the remedy and to assess the need for additional treatment, including additional injections/applications of oxygenating compounds or the expansion of areas in the groundwater aquifer where such compounds are to be applied. Institutional controls in the form of an environmental easement/restrictive covenant that will at a minimum require: (a) restricting excavation or other activities that would interfere with constructed remedies; (b) restricting new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed; and (c) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met.

II. Description of the Settlement

The proposed Consent Decree obligates the PRPs to perform the RD/RA for the ROD remedy for the Site. The estimated cost of the remedy is $3,815,000 inclusive of capital costs for construction as well as long-term operation and maintenance. EPA's total response costs at the Site through August 31, 2007 plus interest were approximately $550,000. The proposed Consent Decree obligates the PRPs to reimburse $495,000 to EPA which represents a ninety percent recovery of past costs plus prejudgment interest. Including the costs of RD/RA, the proposed settlement would result in the PRPs' funding of ninety-nine percent of total response costs at the Site. The $495,000 payment for past costs will be deposited in a Special Account for the Site that will be established within the Superfund for the payment of EPA's future response costs at the Site.

The Consent Decree obligates the PRPs to pay the United States' future response costs and to implement institutional controls including restrictive covenants and an environmental easement to ensure non-interference with, and continued effectiveness of, the ROD remedy.

III. EVALUATION OF CRITERIA FOR ENTRY INTO THE CONSENT DECREE

Set forth below is an evaluation of the settlement embodied in the proposed Consent Decree under the ten criteria outlined in EPA's December 5, 1984 Interim CERCLA Settlement Policy.

1. Volume of Wastes Contributed to Site by Each PRP

The volume of waste liquids disposed of at the Site is not known. The residue from the waste liquid disposal consists of approximately 30,000 cubic yards of contaminated soils. The original Nepera company operated the Site from 1953 through Warner-Lambert's purchase of Nepera in 1956. Warner-Lambert exercised control over waste disposal decisions during its ownership of Nepera from 1956 through final waste disposal at the Site in 1967 and Site closure in 1974. Warner-Lambert was merged into Pfizer, Inc. in February, 2000. Warner-Lambert sold Nepera, Inc. in 1976 and Cambrex Corporation is the current owner of Nepera, Inc. There was no waste disposal at the Site following Warner-Lambert's sale of Nepera.

2. Nature of Wastes Contributed

The wastes disposed of at the Site were waste liquids from the production of pharmaceuticals at the Nepera facility in Harriman, New York which produced pyridine compounds used in the production of vitamins. The primary constituents of concern in the waste liquids were pyridines, benzene, chlorobenzene, ethylbenzene, and xylenes.

3. Strength of Evidence Tracing the Wastes at the Site to the Settling Parties

A. Pfizer, Inc.

Warner-Lambert was merged into Pfizer, Inc. in February, 2000. In a 1987 NYSDEC administrative proceeding, Warner-Lambert took the deposition of Charles Eppolito who worked at the Nepera Harriman facility from 1942 until 1970 and was production manager at the facility from 1950 until his retirement in 1970. During his deposition, Mr. Eppolitio testified that decisions concerning the wastewater at the Harriman facility were made directly by Warner-Lambert personnel at its headquarters in New Jersey. The plant manager to whom he reported at the Harriman facility was a Dr. Solmssen who was an employee of Warner-Lambert, not Nepera. Off-spec products from the Warner-Lambert facility were shipped to Nepera in Harriman and subjected to further processing, which resulted in liquid wastes being transported off-site for disposal. Warner-Lambert produced Mr. Eppolito in the 1987 administrative proceedings for the primary purpose of establishing the liability of William Lasdon as an operator of both the Harriman facility and the Site. Mr. Eppolito's testimony, however, concerning Warner-Lambert's direct involvement in production and waste disposal decisions at the

Harriman facility and the Site was uncontested. In a Consent Decree entered in U.S. District Court for the Southern District of New York in 1998 with respect to its claims against the Lasdon Estate, Warner-Lambert agreed that it would not contest CERCLA liability to the State of New York in a subsequent action with respect to the Site. While Warner-Lambert has not conceded CERCLA liability to the United States, the 1987 administrative record cited above, together with the concession of CERCLA liability to the State, make it extremely unlikely that Pfizer would contest liability to the United States with respect to CERCLA response at the Site. Pfizer, as the successor to Warner-Lambert, is a liable party pursuant to CERCLA Section 107(a)(2) 42 U.S.C. §9607(a)(2) as the owner/operator of the Site during the disposal period from 1957-1967.

B. Nepera, Inc./Cambrex Corporation

The New York State Department of State records show that Nepera, Inc. is the same corporation as the one incorporated by Warner-Lambert in New York State on January 11, 1957 as Nepera Chemical Company, Inc. The property records for Orange County, New York show Nepera Chemical Company, Inc. as the owner of the Site property. EPA has no records indicating when the name of the corporation was changed from Nepera Chemical Company, Inc. to Nepera, Inc. Nepera's parent corporation, Cambrex Corporation, sold Nepera's Harriman, New York facility as part of an asset sale on November 10, 2003. At the time of that sale, the Harriman property was also in the name of Nepera Chemical Company, Inc. It is clear, therefore, that Cambrex operated Nepera under both corporate names. Nepera is liable as the current owner[1] of the Site pursuant to Section 107(a)(1), 42 U.S.C. §9607(a)(1).

Warner-Lambert sold Nepera to Schering A.G., a West German corporation in 1976. In 1986, Schering sold Nepera to CasChem Group, Inc. which was renamed Cambrex Corporation in 1987. Although Nepera is listed on the New York Secretary of State's website as being an active corporation, it appears that Nepera is

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[1]Orange County property records list the owner of the Site property as Nepera Chemical Co., Inc., the corporate name before the sale to Warner-Lambert in 1956. Nonetheless, the mailing address of the owner is indicated as the Nepera, Inc. offices on Rte. 17 in Harriman, New York. Nepera, Inc. stipulated to ownership of the Site when it agreed with NYSDEC to conduct the RI/FS for the Site. It is not anticipated that Nepera, Inc. would contest its ownership of the Site property.

not an operating corporation at this time. On or about January 1, 2002, Cambrex incorporated a new subsidiary, Rutherford Chemicals, Inc. to manage six of its subsidiary corporations, including Nepera. On November 10, 2003, Cambrex sold the assets of Rutherford Chemicals, Inc. to the Rutherford Acquisition Corporation which reorganized as Rutherford Chemicals, LLC after the sale. Rutherford Chemicals, LLC acquired the Nepera facility in Harriman, NY as part of that asset sale. Rutherford Chemicals, LLC operated the Harriman facility for approximately a year and a half and closed the facility in May 2005. In April 2006, Rutherford Chemicals, Inc. commenced an action against Cambrex in Supreme Court, State of New York, for breach of warranty and covenants concerning environmental problems at facilities transferred in the asset sale. In a March 27, 2007, interlocutory decision and order concerning discovery in that action, Rutherford Chemicals LLC et al. v. Cambrex Corporation (Index No. 601176, Sup. Ct., Co. of New York, March 27, 2007), the Court discussed the terms of the asset sale as including Cambrex's retention of liability for environmental law violations that existed prior to November 11, 2003 and its retention of its rights, title and interest in the Site property.

Since the Harriman facility was Nepera's only production facility, it appears that Nepera neither has remained an active, functioning corporation nor retained any substantial assets which would give it an ability to pay EPA response costs. Cambrex, on the other hand, in its hands-on management of its subsidiary Nepera's affairs, sold all of Nepera's assets and retained liability, *inter alia*, for the Site. On the basis of this evidence, Cambrex would have no basis to refute the government's arguments to pierce the corporate veil and/or to impose a constructive trust on Cambrex's assets as a result of its liquidation of its subsidiary's assets without arrangement for funding known liabilities, including environmental liabilities for the Site.

4. Ability of the Settling Parties to Pay

As of October 2006, Pfizer reported a net worth in excess of $65 billion and annual sales in excess of $51 billion.

Cambrex had sales of $252 million for calendar year 2007 with a positive cash flow of $209 million in net income. As of December 31, 2007, Cambrex had $38 million in cash or cash equivalents on hand.

Pursuant to the Financial Assurance provisions of the proposed Consent Decree, Pfizer will submit a guarantee based on the RCRA

financial test in the sum of $1,907,500 and Cambrex will secure a letter of credit in the same amount. In conclusion, both companies have the ability to pay for the remediation and operation and maintenance of the remedy for the Site.

5. Litigative Risks in Proceeding to Trial

The liability of the Settling Defendants is clear and there would be little litigation risk in proceeding to trial with respect to liability.

The government's proof with respect to its past costs would present some problems for us. Approximately $146,000 of our total past costs of $532,000 are attributable to EPA's disagreement with the NYSDEC during the period from 1996-1998 concerning the adequacy of the PRPs' performance of the RI/FS for the Site, as well as NYSDEC's acceptance of a treatability study that the PRPs conducted. In essence, EPA's costs during this period were incurred overseeing NYSDEC's oversight of the PRPs' performance of the RI/FS. While EPA attended certain meetings with NYSDEC and the PRPs during this time period, the PRPs were not on notice of the level of disagreement between EPA and NYSDEC concerning these matters.

In settlement negotiations, the PRPs focused on this time period and challenged EPA's costs on the basis that NYSDEC was the lead agency, and there ostensibly was little work being performed by EPA during that time period. In addition, the PRPs questioned work performed by an EPA contractor during that time, but dropped its inquiry when we provided information identifying the work by that contractor as laboratory analyses. Further inquiry by the PRPs would have disclosed that the analytical results reported by EPA's contractor were inconsistent with the analytical results reported by the PRPs. EPA never utilized its own contractor's data, only the data generated by the PRPs. The expenditure for this questionable work, the contractor's charges and associated indirect costs, was approximately $39,000.

Settling Defendants argued in negotiations that EPA's costs were "excessive" or "unreasonable." We rebutted these arguments on the basis that such challenges did not rise to the level of "inconsistency" with the National Contingency Plan.

It is well-established that the only way a responsible party can escape liability for the government's costs incurred at a particular site is to demonstrate that the costs are inconsistent with the NCP. A response cost is only inconsistent with the NCP if the government's response action giving rise to a particular

cost is inconsistent with the NCP. To show that the government's response action is inconsistent with the NCP, a defendant must demonstrate that EPA acted arbitrarily and capriciously in choosing a particular response action to respond to a hazardous waste site. United States v. Hardage, 982 F.2d 1436, 1442 (10th Cir. 1992). In the absence of defendants' demonstration that EPA's selection of a remedy was arbitrary and capricious, the federal courts have typically rebuffed defendants' challenges to specific response costs. The courts' rejection of such challenges was perhaps most strongly stated in United States v. Kramer, 913 F.Supp. 848 (D.N.J. 1995) where the Court held that "arguments that individual response costs are excessive, duplicative, improper, and not cost effective, as a matter of law, do not allege inconsistency with the NCP and do not provide any defense in a cost recovery action." Id. at 860.

Nonetheless, we would neither want to litigate the issue with respect to the contractor's work discussed above, nor focus on the disputes between EPA and the State agency. Under these circumstances, we agreed to a reduction of $55,000 in EPA's demand for past costs.

6. Public Interest Considerations

The settlement is clearly in the public interest since it will result in the Settling Defendants implementing the remedial action for the Site and the recovery of approximately ninety percent of our past response costs and all future response costs. The costs that we recover will be deposited in a Special Account that will finance the costs of EPA's further response actions at the Site.

7. Precedential Value

None.

8. Value of Obtaining a Present Sum Certain

The settlement will result in the reimbursement of ninety percent of EPA's past response costs. Litigation concerning certain costs would require the expenditure of resources considerably greater that the ten percent past costs compromise and, as discussed above, could present the risk of a court decision that could blur the distinction between "excessive" or "unreasonable" and inconsistency with the NCP.

9. Inequities and Aggravating Factors

Not applicable.

10. Nature of the Case that Remains After Settlement

None. The proposed Consent Decree resolves EPA's case against all potentially responsible parties other than the Lasdon Estate, and because of the nature and amount of the compromise (roughly 1% of total response costs with respect to the Site) as well as the factors discussed below, it would not be advisable to pursue a cost recovery action against the Lasdon Estate.

In May 1998, New York State, the Lasdon Estate, Nepera and Warner-Lambert executed a Consent Decree that was entered in the United States District Court for the Southern District of New York. The Consent Decree, *inter alia*, required the Estate to deposit $13,000,000 in escrow in a Trust account to be used for the remediation of the Harriman facility and the Site[2].

In exchange for that payment, Nepera and Warner-Lambert agreed to indemnify and defend the Estate against any and all environmental claims (including any CERCLA claims) with respect to the Harriman facility and the Site, as well as other identified hazardous waste sites.

The Lasdon Estate was judicially settled by the Surrogate's Court on March 7, 2006. Notwithstanding the closing of the Estate, it still remains an open question whether assets distributed from the Estate could be reached in the hands of beneficiaries. While no case law could be found in the Second Circuit on this point, case law in other courts appears to be split. Some courts hold the estate liable under a trust fund theory in which the beneficiary is deemed to hold assets received from a liable party's estate in trust for the benefit of satisfying the decedent's environmental liabilities. North Carolina ex. Rel. Howes v. Peele, 876 F. Supp. 733, 743 (E.D.N.C. 1995). Other courts refuse to reach assets in the hands of beneficiaries, if they were not involved in the activities giving rise to CERCLA liability and their only connection to the assets was through inheritance. See, Chesapeake and Potomac Tel. Co. v. Peck Iron &

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[2]The latest accounting of the Trust showed a balance of approximately $2.5 million, as of December 31, 2006. It is not known whether the Settling Defendants will utilize any of the remaining money for remedial action at the Site.

Metal Co., 814 F. Supp. 1285, 1292 (E.D. Va. 1993). Overall, the case law appears to suggest that a court will hold the estate liable and reach estate assets in the hands of beneficiaries, if the decedent would have been liable under CERCLA during his/her lifetime.

An attempt to reach the assets in the hands of the beneficiaries of the Lasdon Estate, however, would present a difficult fact pattern for the government. The District Court for the Southern District of New York, which would have jurisdiction over such an action, has already entered a Consent Decree to which the State of New York was a party. In that Consent Decree, the Estate was given a complete release upon funding a trust which was to be utilized in part to fund the remediation for the Site. EPA was on notice concerning the pending action and chose not to intervene in the action since the State, at that time, had the enforcement lead for the Site. Nepera and Pfizer, the two corporate PRPs are clearly liable. These corporations not only have the financial ability to perform the remedy for the Site, but they also have granted the Estate complete indemnification pursuant to the 1998 Consent Decree in the event that the Estate were to be sued concerning matters addressed in the Consent Decree. Although the Estate may technically be a PRP, and the assets of the Estate conceivably could be reached in the hands of the beneficiaries, it would be unlikely that the Court would find the circumstances discussed above appropriate for the establishment of a constructive trust. We can secure all necessary relief from the two corporate parent PRPs. In consideration of these facts, EPA believes it to be unnecessary to take any action against either the Lasdon Estate, or the beneficiaries of the Estate on a constructive trust theory.

IV. CONCLUSION

The proposed RD/RA settlement will result in the PRPs' performance of a remedial action with a net present value of $3,815,000 and the recovery of $495,000 in the United States' past response costs. The proposed settlement represents a commitment by the Settling Defendants to perform Work and reimburse response costs constituting approximately ninety-nine percent of the total response costs for the Site.

In light of the factors presented above, the subject agreement represents a reasonable and favorable resolution for remediation and cost recovery with respect to the Nepera Chemical Company Superfund Site.

Memorandum

90-11-3-09274

Subject:	Date:
Approval Memorandum: Proposed Complaint and Consent Judgment in *United States v. Cambrex Corp et al.* (S.D.N.Y.)	June 20, 2008

To: Ellen Mahan
Deputy Section Chief
EES

From: Sarah E. Light
Assistant U.S. Attorney
Chief, Environmental Protection Unit, S.D.N.Y.

SUMMARY AND RECOMMENDATION

Attached for your approval and signature are a proposed Complaint and Consent Decree settling the United States' claims on behalf of EPA with respect to the Nepera Chemical Company Superfund Site in the Town of Hamptonburgh, Orange County, New York ("Site").

The Complaint states claims pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607, against the Cambrex Corporation, Nepera, Inc., Warner-Lambert Company, LLC, and Pfizer, Inc. (the "Settling Defendants"). The Settling Defendants are alleged to have owner and operator liability with respect to the Site.

The proposed Consent Decree resolves the liability of these parties to the United States. Pursuant to the Consent Decree, the Settling Defendants will perform the Remedial Design/Remedial Action set forth in the Record of Decision ("ROD") for the Site. The estimated cost of the remedy is $3,815,000, including capital costs for construction as well as long-term operation and maintenance. In addition, the Consent Decree requires the Settling Defendants to pay EPA $495,000 of EPA's total past costs of $550,000. The Consent Decree also obligates the Settling Defendants to pay the United States' future response costs with respect to the Site, and to implement institutional controls including restrictive covenants and an environmental easement to ensure non-interference with, and the continued effectiveness of, the ROD remedy.

I recommend that you approve and sign the proposed Complaint and Consent Decree.

[✓] APPROVED
[ ] DISAPPROVED

June 24, 2008
Date

ELLEN MAHAN
Deputy Section Chief

Memorandum

PRIVILEGED - DO NOT RELEASE

90-11-3-09274

Subject: Briefing Memorandum: Proposed Complaint and Consent Judgment in *United States v. Cambrex Corp et al.* (S.D.N.Y.)	**Date:** June 20, 2008

To: Ellen Mahan
Deputy Section Chief
EES

From: Sarah E. Light
Assistant U.S. Attorney
Chief, Environmental Protection Unit, S.D.N.Y.

SUMMARY

Attached for your approval and signature are a proposed Complaint and Consent Decree settling the United States' claims on behalf of EPA with respect to the Nepera Chemical Company Superfund Site in the Town of Hamptonburgh, Orange County, New York ("Site").

The Complaint states claims pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, against the Cambrex Corporation, Nepera, Inc., Warner-Lambert Company, LLC, and Pfizer, Inc. (the "Settling Defendants"). The Settling Defendants are alleged to have owner and operator liability with respect to the Site.

The proposed Consent Decree resolves the liability of these parties to the United States. Pursuant to the Consent Decree, the Settling Defendants will perform the Remedial Design/Remedial Action ("RD/RA") set forth in the Record of Decision ("ROD") for the Site. The estimated cost of the remedy is $3,815,000, including capital costs for construction as well as long-term operation and maintenance. In addition, the Consent Decree requires the Settling Defendants to pay EPA $495,000 of EPA's total past costs of $550,000, representing a 90% recovery of past costs. The $495,000 will be deposited into a Special Account for the Site. The Consent Decree also obligates the Settling Defendants to pay the United States' future response costs with respect to the Site, and to implement institutional controls including restrictive covenants and an environmental easement to ensure non-interference with, and the continued effectiveness of, the ROD remedy.

AUTHORITY

The authority to approve this settlement has been delegated to the Deputy Section Chief pursuant to ENRD Directive 2004-01, Section B(4) and (5), because: (a) with respect to the claim under CERCLA Section 107, the past costs are less than $20 million and the compromise is less than $1 million, and (b) with respect to the claim under CERCLA Section 106, the settlement is being filed simultaneously with the complaint and calls for the responsible parties to perform all removal and remedial action addressed by the decree, and the estimated cost of completion of the remedial action is less than $10 million.

DISCUSSION

I. Background

A. The Site

The Site is located approximately 1.5 miles south of the Village of Maybrook, in the Town of Hamptonburgh, Orange County, New York, on the southern side of Orange County Highway 4. The Site is approximately 29.3 acres in size and, at its western boundary, includes a portion of the Beaverdam Brook which flows into Otter Kill just beyond the southern boundary of the Site. The Site is surrounded by farmland and is designated for a low density rural residential/agricultural usage in the Town of Hamptonburgh's Master Plan. Public water supply wells for the Village of Maybrook are located approximately 800 feet to the northeast of the Site.

The majority of the Site is forested except for the area of six former wastewater lagoons which are covered with grasses, wildflowers and brush. The former lagoons comprise a total area of approximately three acres located within a five-acre area.

In 1942, the Pyridium Corporation ("Pyridium") commenced operations at a facility in Harriman, New York, located approximately 25 miles away from the Site, for the production of bulk pharmaceutical chemicals and pyridine compound intermediates that were used, *inter alia*, in the production of vitamin B-3. In 1949, the Pyridium Corporation merged with the Nepera Chemical Company to form the Nepera Chemical Company, Inc. In 1952, when Nepera's operations at the Harriman facility were constrained by problems in disposing of its wastewater, it purchased farmland at the Site for such disposal. In 1952, the Nepera Chemical Company, Inc. commenced construction of wastewater lagoons at the Site. These lagoons were utilized for disposal of liquid wastes from the Harriman plant from 1953 to 1967.

In December 1956, Warner-Lambert purchased Nepera. The Nepera Chemical Company, Inc. subsequently was dissolved and Warner-Lambert reincorporated the company as Nepera, Inc. on January 11, 1957 ("Nepera"). Warner-Lambert continued to operate the lagoons at the Site for the disposal of liquid wastes from the Harriman facility from the time of its purchase of Nepera in December 1956, until 1967, when industrial wastes were no longer disposed of at the Site. Warner-Lambert backfilled three of the lagoons in 1968, and the remaining three lagoons were filled in 1974.

In 1976, Warner-Lambert sold Nepera to Schering A.G., a West German corporation, after the last three lagoons at the Site had been backfilled. Schering had no known involvement with waste disposal at the Site. In 1986, Schering sold Nepera to CasChem Group, Inc. of Bayonne, New Jersey. CasChem was renamed Cambrex Corporation in 1987. At present, Nepera, Inc. remains a 100%-owned subsidiary of Cambrex.

B. Response Actions

On October 1, 1984, EPA proposed the Site for addition to the National Priorities List ("NPL") on the basis of groundwater and soil data demonstrating contamination with volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs") and heavy metals. The Site was added to the NPL on June 1, 1986.

The New York State Department of Environmental Conservation ("NYSDEC") entered into administrative consent orders with Nepera in 1984 for Nepera to conduct preliminary environmental investigations at both the Harriman plant and the Site. Nepera completed the preliminary investigation for the Site in May 1987. NYSDEC subsequently issued an administrative complaint against Nepera, Warner-Lambert and the Estate of William Lasdon, a former owner/operator of the Site prior to Warner-Lambert's acquisition of Nepera. NYSDEC's administrative complaint sought to have these parties, *inter alia*, conduct the remedial investigation/feasability study ("RI/FS") for the Site. On March 21, 1988, NYSDEC entered into an administrative stipulation with Nepera and Warner-Lambert for these two parties to perform the RI/FS. Nepera's consultants, Conestoga-Rovers & Associates, performed the RI/FS for the Site.

In 1994, in the draft FS Report, Nepera's consultants recommended a remedy consisting of soil vapor extraction ("SVE") and in-situ biopiles. At that time, EPA expressed concerns about the adequacy of the data base for the RI, the companies' preconceptions concerning remedy selection, and the inadequate characterization of groundwater at the Site. Nepera subsequently conducted treatability studies to assess the viability of SVE/biopiles for Site remediation, culminating in a treatability study report dated September 25, 1997.

EPA had concerns with respect to both the RI/FS and the treatability study. In a July 1, 1998 letter, EPA directed Nepera to install additional groundwater wells to define the extent of groundwater contamination and to provide a basis to assess whether an active groundwater remedy would be necessary at the Site. In addition, EPA required Nepera to revise the human health and environmental risk assessments for the Site which, in turn, required additional sampling for heavy metals in soils to determine whether levels of metals in unremediated soils would present unacceptable risks. In 1999, Nepera submitted revised work plans.

In 2001, additional groundwater wells were installed to further investigate the groundwater plume in the overburden and bedrock at the Site. In response to EPA comments, Nepera agreed to perform additional inorganic characterization of the lagoons, background sampling and mercury speciation. In 2002, Nepera took additional groundwater samples. In 2003, additional soil samples were taken from the lagoons as well as from offsite areas to determine background levels.

Commencing with the July 1, 1998 letter to Nepera, EPA assumed the *de facto* lead for the Site from NYSDEC. The formal shift in enforcement lead from NYSDEC to EPA occurred at the conclusion of the RI/FS process in the context of EPA's preparation of the Proposed Plan in June 2007. EPA issued a Record of Decision ("ROD") and a Special Notice Letter to potentially responsible parties on September 28, 2008.

The parties' negotiations subsequent to the issuance of the Special Notice Letter resulted in the attached proposed Consent Decree.

C. ROD Requirements

The ROD requires, among other things, (a) the excavation of Site soils within the former lagoons and placement of the soils into a biocell, using soil vapor extraction and biological degradation technologies to reach target cleanup levels; (b) backfilling of the excavated areas of the Site which are not utilized in the construction of the biocell; and (c) bioremediation of the

groundwater following the removal of source-area soils by the introduction of oxygenating compounds to facilitate bioremediation through enhancement of the indigenous microbial population. The ROD remedy also requires the implementation of a long-term groundwater monitoring program to verify that the concentrations and the areal extent of the groundwater contaminants are declining.

Results of the long-term groundwater monitoring will be used to evaluate the effectiveness of the remedy and to assess the need for additional treatment, including applying additional injections/applications of oxygenating compounds or the expansion of areas in the groundwater aquifer where such compounds are to be applied. The ROD further requires the introduction of institutional controls in the form of an environmental easement/restrictive covenant that will, at a minimum, require restricting: (a) excavation or other activities that would interfere with constructed remedies; (b) new construction at the Site, unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed; and (c) the use of groundwater as a source of potable or process water unless groundwater quality standards are met.

EPA's past costs at the Site through August 31, 2007, plus interest, total approximately $550,000. EPA estimates that the costs of the remedy is $3,815,000, including capital costs for construction, as well as long-term operation and maintenance.

II. The United States' Complaint

The United States' proposed Complaint names as defendants the Cambrex Corporation, Nepera, Inc., Warner-Lambert Company, LLC, and Pfizer, Inc. The Complaint states claims under sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613, for injunctive relief, declaratory relief and the reimbursement of response costs.

Each of the parties named in the Complaint is named as an owner and operator under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a result of its past or present ownership or operation of the Site. Defendants Warner-Lambert and Pfizer (as Warner-Lambert's corporate successor) are liable as past owners/operators due to Warner-Lambert's ownership of the Site from 1957 until 1976, including the time period from 1957 through 1967 when there was "disposal" of a hazardous substance at the Site within the meaning of Sections 101(20), 101(29) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20), 9601(29), 9607(a)(2). Defendants Nepera, Inc. and Cambrex Corporation currenly own and operate the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

III. The Proposed Consent Decree

The Consent Decree represents an excellent settlement. It will reimburse EPA for 90% of its past response costs, and will obligate the Settling Defendants to complete the remedial action at the Site.

A. Terms of the Consent Judgment

1. Response Costs

EPA's total response costs at the Site through August 31, 2007, plus interest were approximately $550,000. The proposed Consent Decree obligates the Settling Defendants to

reimburse $495,000 to EPA, representing a 90% recovery of past costs plus prejudgment interest. The $495,000 payment for past costs will be deposited in a Special Account for the Site that will be established within the Superfund for the payment of EPA's future response costs at the Site.

The Consent Decree also obligates the PRPs to pay the United States' future response costs, and to implement institutional controls including restrictive covenants and an environmental easement to ensure non-interference with, and continued effectiveness of, the ROD remedy.

2. Performance of the Work

The proposed Consent Decree obligates the Settling Defendants to perform the RD/RA for the ROD remedy for the Site. The estimated cost of the remedy is $3,815,000 inclusive of capital costs for construction as well as long-term operation and maintenance. Including the costs of RD/RA, the proposed settlement would result in the Settling Defendants' funding of 99% of total response costs at the Site.

The ROD requires, among other things, the excavation of Site soils within the former lagoons and placement of the soils into a biocell, using soil vapor extraction and biological degradation technologies to reach target cleanup levels; backfilling of the excavated areas of the Site which are not utilized in the construction of the biocell; and bioremediation of the groundwater following the removal of source-area soils by the introduction of oxygenating compounds to facilitate bioremediation through enhancement of the indigenous microbial population.

The Consent Decree also requires the implementation of a long-term groundwater monitoring program to verify that the concentrations and the areal extent of the groundwater contaminants are declining. Results of the long-term groundwater monitoring will be used to evaluate the effectiveness of the remedy and to assess the need for additional treatment, including applying additional injections/applications of oxygenating compounds or the expansion of areas in the groundwater aquifer where such compounds are to be applied.

Finally, the Consent Decree requires the implementation of institutional controls in the form of an environmental easement/restrictive covenant that will at a minimum require: (a) restricting excavation or other activities that would interfere with constructed remedies; (b) restricting new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed; and (c) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met.

3. Other Provisions

With respect to the Settling Defendants, the Consent Decree contains the standard United States covenant not to sue "with regard to the Site" pursuant to Sections 106 and 107 of CERCLA. The covenant takes effect upon receipt of the individual Settling Defendant's payment, and also includes standard reservations for criminal liability, and damages for injury to, destruction of, or loss of natural resources, as well as reopeners based upon EPA's discovery of new information or previously unknown conditions.

The Settling Defendants covenant not to assert any claims or causes of action against the United States with respect to the Site or the Consent Decree, including (but not limited to)

covenants not to sue the Superfund for reimbursement or to bring claims under section 107 and 113 of CERCLA. The Settling Defendants also receive contribution protection. As to the Settling Defendants, the "matters addressed," to which the protection applies, are defined as "all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site."

The Consent Decree contains standard provisions with respect to such subjects as access and institutional controls, performance guarantee, access to information, and retention of records. The Consent Decree imposes stipulated penalties on the Settling Defendants for violations of the Consent Decree, running from $1,000 per day up to $12,000 per day for various types and durations of violations. The Consent Decree also imposes a $500,000 work takeover stipulated penalty.

B. Justification for the Consent Decree

This Consent Decree appropriately resolves the liability of the potentially responsible parties at the Site. EPA has analyzed documentation from the Site that sheds light on such factors as each party's role at the Site, number of transactions, volumes of materials, and the nature of the substances sent to the Site, in attempting to determine the Settling Defendants' liability. The factors considered and our general calculations are set forth in this Section.

1. *Wastes at the Site*

The wastes disposed of at the Site were waste liquids from the production of pharmaceuticals at the Nepera facility in Harriman, New York, which produced pyridine compounds used in the production of vitamins. The primary constituents of concern in the waste liquids were pyridines, benzene, chlorobenzene, ethylbenzene, and xylenes. The residue from the waste liquid disposal consists of approximately 30,000 cubic yards of contaminated soils.

2. *Strength of Evidence Tracing the Wastes at the Site to The Settling Defendants*

The original Nepera company operated the Site from 1953 through 1956, when Warner-Lambert purchased Nepera. Warner-Lambert exercised control over waste disposal decisions during its ownership of Nepera from 1956 through final waste disposal at the Site in 1967 and Site closure in 1974. In 1976, Warner-Lambert sold Nepera, Inc. to Schering A.G., a West German corporation. Schering had no known involvement with waste disposal at the Site. In 1986, Schering sold Nepera to CasChem Group, Inc. of Bayonne, New Jersey. CasChem was renamed Cambrex Corporation in 1987. At present, Nepera, Inc. remains a 100%-owned subsidiary of Cambrex. There was no waste disposal at the Site following Warner-Lambert's sale of Nepera. Warner-Lambert was merged into Pfizer, Inc. in February 2000.

A. *Pfizer, Inc./Warner-Lambert*

Pfizer, as the successor to Warner-Lambert, is a liable party pursuant to CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2), as the owner/operator of the Site during the disposal period from 1957-1967.

In a 1987 NYSDEC administrative proceeding, Warner-Lambert took the deposition of Charles Eppolito who worked at the Nepera Harriman facility from 1942 until 1970 and was

production manager at the facility from 1950 until his retirement in 1970. During his deposition, Mr. Eppolitio testified that decisions concerning the wastewater at the Harriman facility were made directly by Warner-Lambert personnel at its headquarters in New Jersey. The plant manager to whom he reported at the Harriman facility, Dr. Solmssen, was an employee of Warner-Lambert, not Nepera. Off-spec products from the Warner-Lambert facility were shipped to Nepera in Harriman, and subjected to further processing, which resulted in liquid wastes that were transported off-site for disposal. Mr. Eppolito's testimony concerning Warner-Lambert's direct involvement in production and waste disposal decisions at the Harriman facility and the Site was uncontested.

In a Consent Decree entered in U.S. District Court for the Southern District of New York in 1998 with respect to Warner-Lambert's claims against another entity that has no liability here relating to the Harriman Site, Warner-Lambert agreed that it would not contest CERCLA liability to the State of New York in a subsequent action with respect to the Site. While Warner-Lambert has not conceded CERCLA liability to the United States, the 1987 administrative record cited above, together with the concession of CERCLA liability to the State, make it extremely unlikely that Pfizer would contest liability to the United States with respect to CERCLA response at the Site.

B. *Nepera, Inc./Cambrex Corporation*

Nepera/Cambrex are liable as the current owner of the Site pursuant to Section 107(a)(1), 42 U.S.C. §9607(a)(1).

New York State Department of State records show that Nepera, Inc. is the same corporation as the one incorporated by Warner-Lambert in New York State on January 11, 1957, as Nepera Chemical Company, Inc. The property records for Orange County, New York show Nepera Chemical Company, Inc. as the owner of the Site property. EPA has no records indicating when the name of the corporation was changed from Nepera Chemical Company, Inc. to Nepera, Inc. Nepera's parent corporation, Cambrex Corporation, sold Nepera's Harriman, New York facility as part of an asset sale on November 10, 2003. At the time of that sale, the Harriman property was also held in the name of Nepera Chemical Company, Inc. It is clear, therefore, that Cambrex operated Nepera under both corporate names.

In 1976, Warner-Lambert sold Nepera to Schering A.G., a West German corporation. In 1986, Schering sold Nepera to CasChem Group, Inc. which was renamed Cambrex Corporation in 1987. Although Nepera is listed on the New York Secretary of State's website as being an active corporation, it is doubtful that Nepera is an operating corporation at this time. On or about January 1, 2002, Cambrex incorporated a new subsidiary, Rutherford Chemicals, Inc. to manage six of its subsidiary corporations, including Nepera. On November 10, 2003, Cambrex sold the assets of Rutherford Chemicals, Inc. to the Rutherford Acquisition Corporation, which reorganized as Rutherford Chemicals, LLC after the sale. Rutherford Chemicals, LLC acquired the Nepera facility in Harriman, NY as part of that asset sale. Rutherford Chemicals, LLC operated the Harriman facility for approximately a year and a half and closed the facility in May 2005. In April 2006, Rutherford Chemicals, Inc. commenced an action against Cambrex in Supreme Court, State of New York, for breach of warranty and covenants concerning environmental problems at facilities transferred in the asset sale. In a March 27, 2007 interlocutory decision and order concerning discovery in that action, *Rutherford Chemicals LLC*

et al. v. Cambrex Corporation (Index No. 601176, Sup. Ct., Co. of New York, March 27, 2007), the Court discussed the terms of the asset sale as including Cambrex's retention of liability for environmental law violations that existed prior to November 11, 2003, and its retention of its rights, title and interest in the Site property.

Since the Harriman facility was Nepera's only production facility, it appears that Nepera has neither remained an active, functioning corporation nor retained any substantial assets which would give it an ability to pay EPA response costs. Cambrex, on the other hand, in its hands-on management of its subsidiary Nepera's affairs, sold all of Nepera's assets and retained liability for the Site. On the basis of this evidence, Cambrex would have no basis to refute the Government's arguments to pierce the corporate veil as well as to impose a constructive trust on Cambrex's assets for liquidation of its subsidiary's assets without arrangement for funding known liabilities, including environmental liabilities for the Site.

3. Litigation Risk

The liability of the Settling Defendants is clear and there would be little litigation risk in proceeding to trial with respect to liability.

The Government's proof with respect to its past costs would present some problems. Approximately $146,000 of EPA's total past costs of $532,000 are attributable to EPA's disagreement with the NYSDEC during the period from 1996-1998 concerning the adequacy of the PRPs' performance of the RI/FS for the Site, as well as NYSDEC's acceptance of a treatability study that the PRPs conducted. In essence, EPA's costs during this period were incurred in overseeing NYSDEC's oversight of the PRPs' performance of the RI/FS. While EPA attended certain meetings with NYSDEC and the PRPs during this time period, the PRPs were not on notice of the level of disagreement between EPA and NYSDEC concerning these matters.

In settlement negotiations, the PRPs challenged EPA's costs on the basis that NYSDEC was the lead agency, and there ostensibly was little work being performed by EPA during that time period. In addition, the PRPs questioned work performed by an EPA contractor during that time, but dropped its inquiry when we provided information identifying the work by that contractor as laboratory analyses. Further inquiry by the PRPs would have disclosed that the analytical results reported by EPA's contractor were inconsistent with the analytical results reported by the PRPs. EPA never utilized its own contractor's data, instead relying only on the data generated by the PRPs. The contractual expenditure for this questionable work (and associated indirect costs) was approximately $39,000. The PRPs also challenged additional EPA past costs. Under these circumstances, we agreed to a reduction of $55,000 in EPA's demand for past costs.

* * * *

The proposed RD/RA Consent Decree will result in the PRPs' performance of a remedial action with a net present value of $3,815,000 and the recovery of $495,000 in the United States' past response costs. The proposed settlement represents a commitment by the Settling Defendants to perform work and reimburse response costs constituting approximately 99% of the total response costs for the Site. In light of the factors presented above, the subject agreement represents a reasonable and favorable resolution for remediation and cost recovery with respect to the Nepera Chemical Company Superfund Site.

CONCLUSION

The Consent Decree constitutes a fair resolution of EPA's claims. Accordingly, I recommend that you approve and sign the proposed Complaint and Consent Decree.